

HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 262

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

AN ACT

RELATING TO ECONOMIC DEVELOPMENT; ENACTING THE NEW MEXICO
RESEARCH APPLICATIONS ACT; PROVIDING FOR A NONPROFIT
CORPORATION TO INTERACT WITH BUSINESS AND GOVERNMENT ENTITIES,
UNIVERSITIES, PRIVATE FOUNDATIONS AND NATIONAL LABORATORIES FOR
THE PURPOSE OF FOSTERING ECONOMIC DEVELOPMENT IN THE AREAS OF
TECHNOLOGY AND INTELLECTUAL PROPERTY; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. ~~[NEW MATERIAL]~~ SHORT TITLE.--Sections 1
through 10 of this act may be cited as the "New Mexico Research
Applications Act".

Section 2. ~~[NEW MATERIAL]~~ PURPOSES.--The purposes of the
New Mexico Research Applications Act are to:

A. promote the public welfare and prosperity of the
people of New Mexico;

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1 B. foster economic development in the area of
2 intellectual property within New Mexico;

3 C. attract investments that will drive
4 technological innovations in New Mexico;

5 D. create high-value technology jobs in New Mexico
6 with appropriately trained employees to fill such jobs;

7 E. forge links, critical partnerships and
8 collaboration among New Mexico's business communities,
9 universities, private foundations, national laboratories and
10 government through the development of a research applications
11 center;

12 F. support educational initiatives in science,
13 technology, engineering and mathematics in the state to ensure
14 the availability of the future workforce required to meet the
15 goals of the New Mexico Research Applications Act; and

16 G. engage in cooperative ventures related to the
17 use of research and development applications, including the use
18 of research and development applications as a means of
19 enhancing state and local resource development and promoting
20 innovative technological advances in the areas of economic,
21 community and workforce development; education; science;
22 technology; engineering; mathematics; research and development;
23 conservation; and health care, within New Mexico.

24 Section 3. [NEW MATERIAL] DEFINITIONS.--As used in the
25 New Mexico Research Applications Act:

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1 A. "board" means the board of directors of the
2 research applications center;

3 B. "department" means the economic development
4 department;

5 C. "research applications center" means the
6 nonprofit corporation created pursuant to the Nonprofit
7 Corporation Act and the New Mexico Research Applications Act;

8 D. "technological innovations" includes research,
9 development, prototype assembly, manufacturing, patenting,
10 licensing, marketing and sale of inventions, ideas, practices,
11 applications, processes, machines and technology and related
12 property rights of all kinds; and

13 E. "university" means:

14 (1) a New Mexico educational institution named
15 in Article 12, Section 11 of the constitution of New Mexico;

16 (2) a community college organized pursuant to
17 the Community College Act; or

18 (3) a technical and vocational institute
19 organized pursuant to the Technical and Vocational Institute
20 Act.

21 Section 4. [NEW MATERIAL] RESEARCH APPLICATIONS CENTER--
22 FORMATION--BOARD OF DIRECTORS--PUBLIC ACCESS TO MEETINGS AND
23 MINUTES.--

24 A. The department shall, pursuant to the Nonprofit
25 Corporation Act and internal revenue service regulations

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1 pertaining to nonprofit corporations, incorporate a corporation
2 with the name "New Mexico research applications center";
3 provided that, if that name is not available, the department
4 shall select another name that reflects the purposes of the New
5 Mexico Research Applications Act.

6 B. The articles of incorporation shall include:

7 (1) provisions for appointing the board
8 pursuant to Subsection C of this section;

9 (2) provisions requiring that board vacancies
10 shall be filled by the appropriate appointing authority;

11 (3) a statement that board members, subject to
12 the availability of funds, will receive per diem and mileage at
13 the rate provided in the Per Diem and Mileage Act for
14 nonsalaried public officers and shall receive no other
15 compensation, perquisite or allowance;

16 (4) a statement that the corporation will have
17 no members;

18 (5) provisions that prohibit any board action
19 inconsistent with the New Mexico Research Applications Act;

20 (6) provisions that prohibit the board from
21 increasing the number of directors;

22 (7) a plan of distribution of the assets
23 remaining after dissolution or final liquidation of the
24 corporation. The plan shall require that, after all
25 liabilities and obligations are paid, all funds of the

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1 corporation shall be deposited in the general fund and all
2 other assets shall be distributed to the department of finance
3 and administration; and

4 (8) any other provisions deemed necessary by
5 the department to ensure compliance with the New Mexico
6 Research Applications Act.

7 C. The board of directors shall be appointed in a
8 manner that reflects the geographic, cultural and ethnic
9 diversity of this state. The board shall consist of thirteen
10 members with relevant experience or expertise in state
11 government, local governments, businesses located in New
12 Mexico, universities, private foundations, national
13 laboratories or investments. The members shall be appointed as
14 follows:

15 (1) the governor shall appoint seven members,
16 one of whom shall, with the advice and consent of the senate,
17 be designated by the governor as the chair of the board; and

18 (2) six members shall be appointed by the
19 legislature as follows:

20 (a) two members appointed by the speaker
21 of the house of representatives;

22 (b) two members appointed by the
23 president pro tempore of the senate;

24 (c) one member appointed by the minority
25 leader of the house of representatives; and

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1 (d) one member appointed by the minority
2 leader of the senate.

3 D. Members shall be appointed for terms of four
4 years except that, of the initial appointees, three members
5 appointed by the governor, one member appointed by the speaker
6 of the house of representatives, one member appointed by the
7 president pro tempore of the senate and the member appointed by
8 the minority leader of the house of representatives shall be
9 appointed for terms of two years.

10 E. Board members may designate an alternate to
11 represent their interest, if approved by the appointing
12 authority.

13 F. All meetings, minutes of meetings and reports of
14 the board, the research applications center and any
15 corporations formed by the research applications center shall
16 be available and open to the public, except that portion of
17 meetings, minutes or reports in which business-sensitive
18 information, as determined by the board, is discussed. Minutes
19 of all meetings and reports of the research applications center
20 and any corporations formed by the research applications center
21 shall be provided by the board to the legislative finance
22 committee and any other interim or standing legislative
23 committees specified by the legislative finance committee
24 within one month of the date of the meeting or date of the
25 report.

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1 Section 5. [NEW MATERIAL] RESEARCH APPLICATIONS CENTER--
2 POWERS.--As directed by the board, the research applications
3 center may:

4 A. acquire, by lease or purchase, the land,
5 buildings, facilities, improvements and equipment necessary to
6 achieve the purposes of the New Mexico Research Applications
7 Act;

8 B. lease to any person any part or all of the land,
9 buildings, facilities, improvements and equipment acquired
10 pursuant to Subsection A of this section;

11 C. enter into contracts, joint powers agreements,
12 memoranda of understanding and other agreements with public and
13 private entities in order to carry out the purposes of the New
14 Mexico Research Applications Act;

15 D. enter into business arrangements for
16 technological innovations with one or more business entities,
17 governmental entities, universities, private foundations,
18 national laboratories or other persons;

19 E. otherwise conduct, sponsor, finance and contract
20 as necessary to further technological innovations;

21 F. purchase, take, receive or otherwise acquire;
22 own; hold; dispose of; use; or otherwise deal in and with
23 property, including an interest in or ownership of intangible
24 personal property, intellectual property or technological
25 innovations;

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1 G. sell, convey, pledge, exchange, transfer or
2 otherwise dispose of its assets and properties for
3 consideration upon terms and conditions that the board shall
4 determine;

5 H. receive and administer grants, contracts and
6 private gifts;

7 I. invest and reinvest its funds;

8 J. employ officers and employees that it deems
9 necessary, set their compensation and prescribe their duties;

10 K. enter into agreements with insurance carriers to
11 insure against any loss in connection with its operations;

12 L. authorize retirement programs and other benefits
13 for salaried officers and employees; and

14 M. enter into license agreements and contracts
15 involving intellectual property and technological innovations,
16 including agreements for patents, copyrights, franchises and
17 trademarks.

18 Section 6. [NEW MATERIAL] APPLICABILITY OF OTHER
19 LAWS.--

20 A. Except as otherwise provided in the New Mexico
21 Research Applications Act, the research applications center
22 shall not be deemed to be the state, or one of its agencies,
23 instrumentalities, institutions or political subdivisions for
24 the purpose of applying any other laws, including those
25 relating to personnel, procurement of goods and services,

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1 meetings of the board, gross receipts taxes, disposition or
2 acquisition of property, capital outlays, per diem and mileage
3 and inspection of records.

4 B. The research applications center shall be
5 deemed:

6 (1) an agency of the state when applying laws
7 relating to the furnishing of goods and services by the
8 research applications center to the state or any other agency,
9 political subdivision or institution of the state; and

10 (2) a governmental entity for purposes of the
11 Tort Claims Act, provided that the research applications center
12 may enter into agreements with insurance carriers to insure
13 against risk in connection with its operations even though the
14 risk may be included among the risks covered by the Tort Claims
15 Act.

16 Section 7. [NEW MATERIAL] ANNUAL AUDIT AND REPORT.--

17 A. The board shall contract annually with an
18 independent certified public accountant, approved by the state
19 auditor, to perform an examination and audit of the accounts
20 and books of the research applications center, including its
21 receipts, disbursements, contracts, leases, sinking funds,
22 investments and any other records and papers relating to its
23 financial standing. The certified public accountant shall make
24 a determination as to whether the research applications center
25 has complied with the provisions of the New Mexico Research

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1 Applications Act. The person performing the audit shall
2 furnish copies of the audit report to the governor; the public
3 regulation commission, where they shall be placed on file and
4 made available for inspection by the general public; and the
5 legislative finance committee.

6 B. An annual report of the activities during the
7 previous fiscal year of the research applications center shall
8 be provided by the board to the legislative finance committee
9 at least ninety days in advance of each regular legislative
10 session. The legislative finance committee shall forward any
11 report submitted to any interim or standing legislative
12 committees as deemed appropriate. Upon request of the
13 appropriate committee, the board or the board of directors of
14 any corporation formed by the research applications center
15 shall appear before any interim or standing legislative
16 committee to provide an accounting of all activities.

17 Section 8. [NEW MATERIAL] CONFLICTS OF INTEREST.--

18 A. If any director, officer or employee of the
19 research applications center is interested either directly or
20 indirectly or is an officer or employee of or has any ownership
21 interest in a legal entity interested directly or indirectly in
22 a contract or potential contract with the research applications
23 center, except for any agency, instrumentality, institution or
24 political subdivision of the state, the interest shall be
25 disclosed to the board and shall be set forth in the minutes of

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1 the board. The director, officer or employee having the
2 interest shall not participate on behalf of the research
3 applications center in the authorization of the contract.

4 B. No director, officer or employee of the research
5 applications center or state officer shall accept any
6 gratuities in connection with the issuance of bonds under the
7 New Mexico Research Applications Act, nor shall any such
8 individual be reimbursed for expenses incident to the issuing
9 of bonds except such expenses as are reimbursed as provided
10 under the rules of the board.

11 C. Nothing in this section shall prohibit an
12 officer, director or employee of a financial institution from
13 participating as a member of the board in setting general
14 policies of the research applications center, nor shall any
15 provision of this section be construed as prohibiting a
16 financial institution of New Mexico from making loans
17 guaranteed pursuant to the provisions of the New Mexico
18 Research Applications Act because an officer, director or
19 employee of the financial institution serves as a member of the
20 board.

21 D. A person who violates the provisions of this
22 section is guilty of a misdemeanor and, upon conviction, shall
23 be punished pursuant to Section 31-19-1 NMSA 1978.

24 Section 9. [NEW MATERIAL] CONTRACTS INVOLVING PUBLIC
25 EMPLOYEES.--Except as provided in Section 10 of the New Mexico

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1 Research Applications Act, the research applications center
2 shall not enter into any contract involving services or
3 property of a value in excess of twenty thousand dollars
4 (\$20,000) with an employee of the state or one of its agencies,
5 instrumentalities, institutions or political subdivisions or
6 with a business in which the employee has a controlling
7 interest unless the governor or the governor's designee makes a
8 determination, in writing, that the employee is able to provide
9 services that are not readily available from another person or
10 is able to provide services that are less expensive or of
11 higher quality than are otherwise available.

12 Section 10. [NEW MATERIAL] TRANSFER OF TECHNOLOGY.--

13 A. Notwithstanding the provisions of Section 9 of
14 the New Mexico Research Applications Act, Section 10-16-7,
15 13-1-190, 21-1-17 or 21-1-35 NMSA 1978 or of any other statute,
16 ordinance or policy regulating the conduct of public employees,
17 an officer or employee of the state or one of its agencies,
18 instrumentalities, institutions or political subdivisions may,
19 subject to Subsection B of this section, apply to the secretary
20 of economic development for permission to establish and
21 maintain a substantial interest in a private entity that
22 provides or receives equipment, material, supplies or services
23 in connection with the research applications center in order to
24 facilitate the transfer of technology developed by the officer
25 or employee from the research applications center to commercial

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1 and industrial enterprises for economic development.

2 B. The secretary of economic development may grant
3 the permission only if all of the following conditions are met:

4 (1) the employer of the officer or employee
5 certifies to the secretary that the employer does not object to
6 the proposed relationship;

7 (2) the officer or employee provides a
8 detailed description of the officer's or employee's interest in
9 the private entity;

10 (3) the nature of the proposed undertaking is
11 fully described;

12 (4) the officer or employee demonstrates, to
13 the satisfaction of the secretary, that the proposed
14 undertaking may benefit the economy of this state;

15 (5) the officer or employee demonstrates to
16 the satisfaction of the secretary that the proposed undertaking
17 will not adversely affect research, public service or
18 instructional activities at any educational institution; and

19 (6) the officer's or employee's interest in
20 the private entity or benefit from the interest will not
21 adversely affect any substantial state interest.

22 C. The board may establish policies for the
23 implementation of this section.

24 Section 11. Section 10-16-7 NMSA 1978 (being Laws 1967,
25 Chapter 306, Section 7, as amended) is amended to read:

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1 "10-16-7. CONTRACTS INVOLVING PUBLIC OFFICERS OR
2 EMPLOYEES.--A state agency shall not enter into a contract for
3 services, construction or items of tangible personal property
4 with a public officer or employee of the state, with the family
5 of the public officer or employee or with a business in which
6 the public officer or employee or the family of the public
7 officer or employee has a substantial interest unless the
8 public officer or employee has disclosed the public officer's
9 or employee's substantial interest and unless the contract is
10 awarded pursuant to the Procurement Code, except that the
11 potential contractor shall not be eligible for a sole source or
12 small purchase contract; provided that this section does not
13 apply to a contract of official employment with the state or to
14 contracts made pursuant to the provisions of the University
15 Research Park and Economic Development Act or the New Mexico
16 Research Applications Act. A person negotiating or executing a
17 contract on behalf of a state agency shall exercise due
18 diligence to ensure compliance with the provisions of this
19 section."

20 Section 12. Section 13-1-190 NMSA 1978 (being Laws 1984,
21 Chapter 65, Section 163, as amended) is amended to read:

22 "13-1-190. UNLAWFUL EMPLOYEE PARTICIPATION PROHIBITED.--

23 A. Except as permitted by the University Research
24 Park and Economic Development Act or the New Mexico Research
25 Applications Act, it is unlawful for any state agency or local

1 public body employee, as defined in the Procurement Code, to
2 participate directly or indirectly in a procurement when the
3 employee knows that the employee or any member of the
4 employee's immediate family has a financial interest in the
5 business seeking or obtaining a contract.

6 B. An employee or any member of an employee's
7 immediate family who holds a financial interest in a disclosed
8 blind trust shall not be deemed to have a financial interest
9 with regard to matters pertaining to that trust."

10 Section 13. Section 21-1-17 NMSA 1978 (being Laws 1889,
11 Chapter 138, Section 68, as amended) is amended to read:

12 "21-1-17. INTEREST IN CONTRACTS BY BOARD MEMBERS OR
13 EMPLOYEES PROHIBITED.--No employee or member of a board of
14 regents of [~~any~~] a state educational institution shall have
15 [~~any~~] direct or indirect financial interest in any contract for
16 building or improving any of that state educational institution
17 or for the furnishing of supplies or services to that
18 institution except as permitted pursuant to the University
19 Research Park and Economic Development Act or the New Mexico
20 Research Applications Act, or unless it complies with
21 provisions of the Governmental Conduct Act and the Procurement
22 Code."

23 Section 14. Section 21-1-35 NMSA 1978 (being Laws 1923,
24 Chapter 148, Section 1415, as amended) is amended to read:

25 "21-1-35. SALES BY BOARDS, OFFICERS OR EMPLOYEES

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1 PROHIBITED--PARTIES TO CONTRACTS RECEIVING COMMISSION OR
2 PROFIT--PENALTY.--No board of regents of a state educational
3 institution, no member of a board and no school official or
4 teacher, either directly or indirectly, shall sell to [~~any~~] a
5 state educational institution that [~~he~~] the person is connected
6 with by reason of being a member of a board of regents of a
7 state educational institution or to [~~any~~] a school official or
8 teacher, any school books, school furniture, equipment,
9 apparatus or any other kind of school supplies, sell property
10 insurance or life insurance to [~~any~~] an employee of that state
11 educational institution or do any work under contract, nor
12 shall any such board or members thereof or school officers or
13 teachers receive any commission or profit on account thereof,
14 and all such persons are prohibited from being parties directly
15 or indirectly to any such contract or transaction; provided
16 that the provisions of this section shall not apply to
17 contracts that are entered into pursuant to the provisions of
18 the University Research Park and Economic Development Act or
19 the New Mexico Research Applications Act or that comply with
20 provisions of the Governmental Conduct Act and the Procurement
21 Code. Any person violating the provisions of this section
22 shall be fined not exceeding one thousand dollars (\$1,000) or
23 imprisoned not exceeding one year in the penitentiary of New
24 Mexico or be fined and imprisoned as set forth in this section
25 in the discretion of the court."

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